



Fresenius Kabi USA, LLC

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July 24, 2018

The Honorable Pete Ricketts  
Governor of Nebraska  
Office of the Governor  
1445 K Street  
Lincoln, Nebraska 68509-4848  
pete.ricketts@nebraska.gov

### **Nebraska's Improper Acquisition of Lethal Injection Drugs**

Dear Governor Ricketts:

I understand that Nebraska has set an execution date for August 14, 2018, and intends to use potassium chloride and/or other medicines manufactured by Fresenius Kabi as part of the state's lethal-injection protocol. While Fresenius Kabi takes no position on capital punishment, we oppose the use of our lifesaving products for this purpose. We have contracts in place with distributors and wholesalers of our products that prohibit the sale to states for executions, and so any acquisition by a state for this purpose would be in contravention of these contracts, and thus illegal and improper. In addition, our pharmaceutical products are approved by the U.S. Food and Drug Administration solely for patient care.

I have written to your predecessor on more than one occasion regarding lethal injection, and I'd like to take this opportunity once again to remind you and your administration of the public health consequences of using our medicines in lethal injection, as it can have a severely negative impact on Nebraska hospitals and the patients who rely on them.

I am copying Attorney General Doug Peterson and Director of Correctional Services Scott Frakes, as well as officials at the FDA who have been involved in this issue and have an ongoing interest in drug shortages. Potassium chloride is on the FDA's drug shortage list today.

Fresenius Kabi USA is the U.S. arm of a European company that specializes in medicines and technologies – including injectable drugs – used in hospitals and clinics across Nebraska and the United States.

**EXHIBIT E**

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Our products are used widely in surgeries, and to treat people with cancer and other serious diseases. Our products are administered to patients hundreds of millions of times a year to heal, cure and reduce pain and suffering. To our knowledge, our medicines have never been used in an execution. In the United States, medical doctors, hospitals and other health care professionals have been vocal in opposing the use of our products in lethal injection, as this could result in shortages that would harm patients in Nebraska and nationwide.

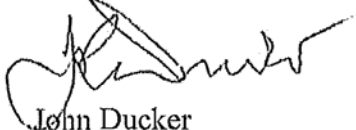
At issue is European Union regulation 1352/2011, which prevents trade in products that could be used for capital punishment or torture. It is because of this regulation that drugs such as sodium thiopental, which were previously used in lethal injection, are now in short supply, or virtually unavailable in the United States. The EU can be expected to add more drugs to its list of trade-restricted products if these drugs are used in executions, or distribution controls for drugs like these are deemed inadequate.

You may be aware that other drug manufacturers and wholesalers have resorted to legal action in other states to enforce their rights and prevent their products from use in executions. Fresenius Kabi is considering all legal options in Nebraska on behalf of the patients that could be harmed by drug shortages.

We therefore respectfully demand that pursuant to open record act NE Code § 84-712 (2017), you immediately disclose the quantities, lot numbers, inventory logs, and invoices for any Fresenius Kabi drugs the state may have acquired for executions, and that you return any such drugs to us without delay. We will provide a full refund. We have asked for the return of our products from Nebraska in the past, and the state has refused. At that time, Nebraska had repealed the death penalty, had no scheduled executions, and assured us the products would be used solely for patient care. Now, it seems the state may have improperly or illegally diverted medicines for use in executions, against our contracts and policies.

I would be happy to discuss this matter with you further, or to provide you or your staff with more information. I greatly appreciate your leadership in this matter, and I look forward to hearing from you as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "John Ducker", is written over a horizontal line.

John Ducker  
President and CEO

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cc: Doug Peterson, Attorney General, State of Nebraska  
Office of the Attorney General, 2115 State Capitol, Lincoln, NE 68509  
(402) 471-2683

Scott R. Frakes, Director, Nebraska Department of Correctional Services  
P.O. Box 94661, Lincoln, NE 68509-4661  
(402) 471-2654

The Honorable Scott Gottlieb, Commissioner, U.S. Food and Drug Administration  
10903 New Hampshire Avenue, Silver Spring, MD 20993

Rebecca K. Wood, J.D.  
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Capt. Valerie Jensen, R.Ph., Associate Director, Drug Shortages Program,  
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